

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

HEATHER MILLARD,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting  
Commissioner of Social Security,

Defendant.

**8:18CV452**

**MEMORANDUM  
AND ORDER**

This matter is before the Court on plaintiff Heather Millard's ("Millard") Amended Motion for Attorney Fees pursuant to 42 U.S.C. § 406(b) (Filing No. 49). Millard achieved a favorable result upon remand pursuant to sentence four of 42 U.S.C. § 405(g) (Filing No. 38). On August 16, 2021, the Court approved (Filing No. 42) the parties' joint stipulation (Filing No. 41) for attorney fees in the amount of \$3,000 under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(1)(A).

Millard, through counsel, now requests payment of attorney fees of \$5,399.50 under § 406(b)(1)(A), which represents 25% of Millard's total past-due benefits. Millard states her counsel expended 12.5 attorney hours before the Court which would yield a hypothetical hourly rate of \$431.96 per hour. Millard maintains this is a reasonable fee under *Gisbrecht v. Barnhart*, 535 U.S. 789, 808-09 (2002), given the risk of counsel not getting paid in contingency cases.

Fees awarded by the Court under § 406(b) may be paid directly to counsel. *See Astrue v. Ratliff*, 560 U.S. 586, 595 (2010) (citing 42 U.S.C. § 406(b)(1)(A)); 20 C.F.R. § 404.1720(b)(4). Millard's counsel requests that payment be sent to Sean D. Cuddigan to be distributed. Counsel states that if he receives the requested § 406(b) award, he will reimburse to Millard the EAJA award of \$3,000.

Defendant Kilolo Kijakazi, Acting Commissioner of Social Security, does not object to an award under § 406(b) and confirms the accuracy of Millard's numbers. But she reminds the Court that it "must independently determine whether an attorney fee in this amount is reasonable."

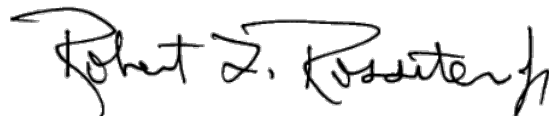
Having carefully conducted that independent review, the Court finds the requested fee award is fair and reasonable for the services rendered. The "character of the representation," the results achieved, and the risk of nonrecovery all support the requested fee award. *Gisbrecht*, 535 U.S. at 807-08. Accordingly,

IT IS ORDERED:

1. Plaintiff Heather Millard's Amended Motion for Attorney Fees pursuant to 42 U.S.C. § 406(b) (Filing No. 49) is granted.
2. Millard is awarded attorney fees in the amount of \$5,399.50.
3. The Social Security Administration shall send payment in that amount to attorney Sean. D. Cuddigan at his address of record.
4. Cuddigan shall then refund to Millard the \$3,000 EAJA fee award and disburse to attorney Wes Kappelman his portion of the § 406(b) award.
4. A separate judgment will issue.

Dated this 1st day of September 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.  
Chief United States District Judge